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EX PARTE OR LATE FILED

July 13, 1999

EX PARTE

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
TW-A325  
Washington, D.C. 20554


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JUL 13 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: The Proposed Global Joint Venture of AT&T Corp. and  
British Telecommunications plc, IB docket No. 98-212

Dear Ms. Salas:

Cathy L. Slesinger, Vice President-International Government Relations at Cable & Wireless plc, has sent the attached letter to FCC Chairman William E. Kennard expressing C&W's views regarding the above-referenced proceeding. Copies of the letter also have been sent to the other Commissioners and to staff members of the International and Common Carrier Bureaus.

Respectfully yours,

*Janice Obuchowski*  
Janice Obuchowski 

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IN COMMUNICATIONS

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EX PARTE

July 13, 1999

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**EX PARTE OR LATE FILED**

Re: AT&T Corp., VLT Co. L.L.C., Violet License Co. L.L.C.,  
and TNV [Bahamas] Ltd., seek FCC consent for grant of Section 214  
authority, modification of authorizations and assignment of licenses in  
connection with the proposed joint venture between AT&T Corp. and  
British Telecommunications plc, IB docket 98-212

Dear Chairman Kennard:

Cable & Wireless plc would like to take this opportunity to express its appreciation to the Commission and its staff for the manner in which it has conducted its review in the above-referenced proceeding. The staff of the International Bureau has conducted a thorough and, many ways, model review of the proposed joint venture of AT&T and BT, allowing all interested parties a full opportunity to express their views and concerns. At this point, however, Cable & Wireless continues to have concerns, not necessarily involving international issues specifically, which it would like to bring to you and the other Commissioners.

C&W would like to restate and clarify its concerns regarding the potential effects of the joint venture on telecommunications competition, which the Commission has worked hard and successfully to promote in recent years. It is C&W's understanding that AT&T and BT have conceded that the joint venture must be regulated as dominant on the transatlantic route because of its affiliation with British Telecom, which continues to exercise market power on the U.K. end of the route. This is an important concession, which C&W suggests should be spelled out in detail in an order in this proceeding. That would make clear that the joint venture will be subject to the dominant carrier provisions detailed in the foreign Participation Order (IB docket

97-142), including structural separation and reporting requirements for traffic, revenues, and provisioning.<sup>1</sup>

Cable & Wireless believes, however, that the dominant carrier regulations that will apply as a result of its affiliation on the foreign end will not be sufficient to restrain the joint venture's ability to dominate the end-to-end route. Without further safeguards, the joint venture could use its dominant power to hinder competition on the U.S. end of the route. Indeed, this is precisely the judgment that both the FCC and Congress have made in requiring special conditions to apply to Bell telephone company affiliates that offer in-region long distance services. Of course, these conditions--contained in Section 272 of the Telecommunications Act and the FCC's rules implementing that section--apply even after all of the "checklist" prerequisites for in-region long distance market entry listed in Section 271 have been met.<sup>2</sup> The Section 272 safeguards are designed not simply to promote local competition but rather to guarantee fair competition in long distance markets by companies affiliated with the traditional incumbent phone companies.

Section 272 requires structural separation, accountability for affiliate transactions, and biennial audits, among other things. It bans any discrimination in favor of the affiliates and limits joint marketing by the affiliates and the LECs. C&W believes the FCC must apply the full range of regulations to the joint venture, just as it would if the "dominant affiliate" were at the U.S. end. The joint venture will, of course, be originating traffic within as well as outside the geographic territory in which its affiliate is dominant.

The United Kingdom's Office of Telecommunications also has recognized the potential danger of close cooperation between the joint venture and its parents. In a consultative document published June 4, 1999, OFTEL proposed to extend several license conditions that now apply to BT to the joint venture, which will operate under an amended version of the Concert international services license.<sup>3</sup> In that document, OFTEL proposed to transfer to the joint venture interconnection and accounting separation obligations, as well as safeguards against discrimination and cross-subsidies.

In proposing to apply these license conditions, OFTEL cited not just the fact that the joint venture would take over the provisioning of regulated services, but also the venture's continuing link to BT. "The joint venture's business model foresees close cooperation between the venture and its parent in the U.K. to provide end-to-end services to customers. It is important that the interface between BT and the joint

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<sup>1</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, IB docket 97-142, released Nov. 26, 1997.

<sup>2</sup> See *Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, CC docket 96-149, 11 FCC Rcd 21905 (1996).

<sup>3</sup> See *Office of Telecommunications, BT/AT&T Joint Venture, A Consultative Document on the Concert License Issued by the Director General of Telecommunications*. Rel. June 1999.

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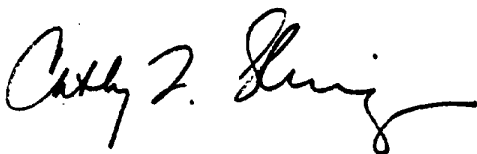
venture is sufficiently well defined that they operate, and can be seen to operate, at arm's length," OFTEL stated in the document.<sup>4</sup>

We applaud OFTEL's conclusion that the joint venture should not be allowed to leverage British Telecom's domestic market power to unfairly compete in its marketing and service offerings to international carriers. But the safeguards required as a matter of British law and regulation may not be commensurate with U.S. safeguards under Section 272. In addition, BT does not have to meet all of the criteria spelled out in the 14-point checklist contained in Section 271 to enter a new market, while the U.S. LECs must do so in order to enter interLATA markets.

It would be ironic if the U.S. should apply a less rigorous regulatory regime to the AT&T-BT joint venture than it applies to affiliates of wholly domestic companies, particularly since the joint venture will seek to serve some of the same multinational corporate customers in the U.S. Regulators in the U.K. are prepared to impose on the venture the full range of safeguards they apply to their dominant carrier, BT. Similarly, the joint venture should not be permitted to evade these necessary and proper safeguards simply because they make the argument that dominance exists only on the U.K. end. The joint venture's market power will affect not only companies doing business in the U.K., but those seeking to compete in the U.S. market, as well. Thus, the FCC should apply a full range of safeguards, including those that apply to affiliates of the U.S. local exchange carriers and other dominant domestic service providers.

Thank you for your time and consideration in this matter, which involves an issue vital not only to C&W but to other carriers seeking to compete in the international telecom services market, as well. If you have any questions about this request please feel free to contact us.

Respectfully,



CLS:imp

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<sup>4</sup> Id., at para. 2.4.